

Appln. No. 10/804,986
Response to Office Action of 11/17/04

REMARKS

Reconsideration of this application is respectfully requested in view of these remarks.

First, on a matter unrelated to the Office Action, the undersigned has noticed that the image file wrapper for this case includes a misfiled Information Disclosure Statement from another case. The image file wrapper shows several papers that were filed on 11/24/2004 intended for Appln. No. 10/804,986. Apparently the last two digits of the intended application number were transposed and the papers were incorrectly filed in the present Appln. No. 10/804,986. The misfiled papers include a 3-page IDS, a 1-page transmittal letter and 2 pieces of prior art. I am sure the proprietor of the other application would appreciate it if the Examiner could direct these papers to the proper file.

Turning now to the Office Action, it will become apparent after a quick review of claim 1 that the cited references fail to disclose or suggest the combination of elements delineated in the claim.

Claim 1 calls for at least three part lines through the closure membrane. Before the container is squeezed each part line is interrupted by a small connecting element across it proximate to the primary vent orifice. The primary vent orifice is the central orifice 13 seen in applicants' FIGS. 2 and 3. The part lines in the illustrated embodiment are delineated with reference numeral 16 and have two pieces labeled 16a and 16b. The connecting elements are labeled with reference numeral 18 in FIGS. 2, 3 and 4. When the container is squeezed, the connecting elements break, and the membrane flaps open along the part lines. As explained in the specification at page 8, lines 4 - 8, "The part lines are so called because they form the lines along which the closure parts when the container is squeezed...." The part lines are thought of as single slits extending outward from the primary vent orifice substantially to the periphery of the membrane. Before the container is squeezed to release its contents, the membrane is prevented from separating along the part lines by the connecting elements 18. It is the rupture of the

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connecting elements that allows the membrane to open. The size of the connecting elements and of the primary vent orifice and the positioning of the connecting elements with respect to the primary vent orifice are correlated with one another so that the connecting elements break away when the container is squeezed and the membrane separates along the part lines. All of this is in claim 1.

The cited *Good* reference does not show the structure of claim 1 with part lines and connecting elements. *Good* shows several embodiments by which the *Good* membrane opens. In particular, the embodiment of *Good's* FIG. 4 uses score lines 15 that do not penetrate through the membrane 14. (See *Good*, Col. 2, lines 34-35) *Good's* FIG. 4 shows a score line 15 going halfway through the membrane. The embodiment of *Good's* FIG. 5 uses two intersecting series of perforations 16. (See *Good*, Col. 2, lines 40-46) The perforated lines 16 may be thought of in effect as a line that has connecting elements all along its length from one end to the other. This is not the structure of the part lines in claim 1. *Good's* FIGS. 6 and 7 relate to an embodiment that has no part lines at all. *Good's* FIG. 8 shows a score line 15a that is not comparable to the part lines and connecting elements of claim 1. The *Good* score line 15a goes almost through the membrane, but there is no discussion of connecting elements or perforations in connection with this embodiment. While *Good's* FIG. 8 shows clearly that the score line 15a in this embodiment goes most of the way through the thickness of the membrane, it still does not go all the way through. That is, FIG. 8 shows the score line still connected, albeit very thinly, along its length. This is consistent with the ordinary meaning of "score line." The Merriam-Webster Unabridged Dictionary defines "score" as a line that does not go all the way through the material it is cut in:

2 a : a line made with or as if with a sharp instrument : **NOTCH, INCISION, SCRATCH** <the score should run with the grain whenever possible -- *Book Production*> <scores, although they do not pass entirely through the skin, are almost as bad as cuts, because they weaken the leather -- *Crops in Peace & War*> <a score made by a

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piston on a cylinder wall>; *especially* : one made as a tally mark **b** (1) : a notch (as made in timber) in which another part is fitted (2) : the groove cut at the ends and sides of a block to admit the strap **c** : an indented line or partial cut in paper, metal, or other material to aid in folding or tearing.

The description in the *Good* specification is confusing, if not outright nonenabling. In the Brief Description of the Drawings *Good* describes FIG. 8 as showing "a score which slightly penetrates its lower surface." This is repeated in the very brief discussion at Col. 2, lines 35-40. Note that the reference to FIG. 4 at Col. 2, line 36, is apparently a typographical error; FIG. 8 was apparently intended. The phrase "slightly penetrates" is a poor choice of words for *Good*. It is akin to being slightly pregnant. In normal understanding either the line penetrates or it does not. There is no in-between ground. FIG. 8 shows that the score line does not penetrate the membrane, and also by the very definition of score the score line does not penetrate the membrane. There is no discussion of connecting elements for the score lines of FIG. 8 as called for in applicants' claim 1. Thus, the *Good* score lines 15a do not have the structure of the part lines and connecting elements of claim 1.

These deficiencies are not supplied by the *Klassen* reference cited as a secondary reference in the Office Action. *Klassen* is cited for its alleged teaching of a primary vent orifice. First, it is noted that merely teaching a primary vent orifice is not enough. There is no mention or suggestion in *Klassen* of the part-line/connecting-element structure as called for in claim 1 and as missing from *Good*. Moreover, the *Klassen* structure is intended to be reclosable, that is, to close itself when less than the entire contents of the bottle is poured out and the bottle returns to its normal shape and the internal container pressure and the external ambient pressure are equal. In teaching a structure that is reclosable, *Klassen* effectively teaches away from the structure of claim 1, which calls for connecting elements that break away when the container is squeezed sufficiently to release the contents.

The above comments on *Good* and *Klassen* apply also to claims 4 and 11. Here the Office Action also cites the *Markva* patent for its teaching of at least

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seven "part lines." By now it should be clear that the *Markva* reference also does not disclose or suggest the part-line/connecting-element structure of claim 1.

The other cited references have been reviewed, but do not help in rectifying the deficiencies of the references relied on in the Office Action.

The undersigned believes that the application is in condition for allowance and action to that effect is respectfully requested. If the examiner feels that there are any lingering issues that can be resolved by telephone or feels that a telephone interview would be beneficial in any way, he is invited to call the undersigned at 510-658-9511.

Respectfully submitted,

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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office to fax No. 703-872-9305 on the date shown below.

3/17/05
Date

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